

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

WESTERN-SOUTHERN LIFE ASSURANCE COMPANY,

Stakeholder,

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CIVIL ACTION NO. 5:20-CV-1400

V.

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ANDRE MCDONALD, and A.M., a
Minor, by and through the minor's next
Friend and/or guardian

§§§§§

Claimants,

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ANDRE MCDONALD'S ANSWER TO WESTERN-SOUTHERN LIFE ASSURANCE
COMPANY'S COMPLAINT FOR INTERPLEADER

ANDRE MCDONALD files this answer to the Western-Southern Life Assurance Company's ("Western-Southern"), Complaint for Interpleader and in support would show as follows:

NATURE OF ACTION

1. This is an interpleader action brought pursuant to FED.R.CIV.PROC. 22 and 28 U.S.C. §1332 to determine who is lawfully entitled to certain funds to which Claimants have potentially competing claims. Because Western-Southern is faced with conflicting claims regarding these funds.

PARTIES

2. Stakeholder Western-Southern is an Ohio Corporation with its principal place of business located in Cincinnati, Ohio.

3. Claimant Andre McDonald is a citizen of the State of Texas and is currently being held in the Bexar County, Texas jail.

4. Claimant A.M., a minor, is a citizen of the State of Texas. A.M. is the daughter of Andreen and Andre McDonald. A.M. is appearing by and through her sole managing conservator, Hyacinth Smith. Exhibit “A” (Doc. 10) A legal proceeding for the guardianship of A.M. is currently pending and the petition for guardianship has been contested by another family member.

JURISDICTION AND VENUE

5. This Court possesses subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the citizenship of the parties is diverse and the amount in controversy exceeds \$75,000.

6. The Court possesses personal jurisdiction over Claimants pursuant to 28 U.S.C. § 2361.

7. Venue is proper pursuant to 28 U.S.C. §1391(b)(1). *See* to 28 U.S.C. § 1391(b)(1) (“A civil action may be brought in—(1) a judicial district in which any defendant resides, if all defendants are residence of the State in which the district is located.”)

FACTUAL ALLEGATIONS

8. The Petition filed by Southern-Life Assurance Company and the Answer filed by Hyacinth Smith state that in October of 2014, Andreen McDonald applied for and was issued a \$1,000,000.00 life insurance policy with Western-Southern. Andreen was the owner of the policy and the insured under the Policy. *Id.* The Policy provided for the payment of a death benefit in the event of Andreen’s death. *Id.* Andreen named her husband, Andre McDonald, the primary beneficiary of the Policy’s proceeds. *Id.* Andreen’s daughter, A.M. was named the contingent beneficiary. *Id.*

9. The Petition filed by Southern-Life Assurance Company and the Answer filed by Hyacinth Smith state that approximately half of the Policy’s death benefit was collaterally assigned to Broadway National Bank as part of a real estate loan and Western-Southern had paid \$514,011.42 of the Policy proceeds to Broadway National Bank per collateral assignment.

10. The Petition filed by Southern-Life Assurance Company and the Answer filed by Hyacinth Smith state that in February 2019, Andreen went missing. Andreen's body was recovered on June 11, 2019. Andreen's husband Andre, was arrested on July 13, 2019, in connection with his wife's disappearance and death.

11. The Petition filed by Southern-Life Assurance Company and the Answer filed by Hyacinth Smith state that on October 2, 2019, Andre McDonald was indicted by a Bexar County Grand Jury for the murder of Andreen, and the case is currently pending in the 399th Criminal District Court, Bexar County, Texas, cause number 2019CR10911.

12. The Petition filed by Southern-Life Assurance Company and the Answer filed by Hyacinth Smith state Texas has adopted a slayer statute. *See* Texas Ins. Code. Ann. §1103.151. It provides that “[a]beneficiary of a life insurance policy or contract forfeits the beneficiary's interest in the policy or contract if the beneficiary is a principal or an accomplice in willfully bringing about the death of the insured”).

13. The Petition filed by Southern-Life Assurance Company and the Answer filed by Hyacinth Smith state Under the terms of the statute, “if beneficiary of a life insurance policy or contract forfeits an interest in the policy or contract under Section 1103.151, a contingent beneficiary named by the insured in the policy or contract is entitled to receive the proceeds of the policy or contract.” *Id.* at 1103.152(a).

14. HYACINTH SMITH has been appointed the temporary sole managing conservator of A.M., in the conservatorship case in the Bexar County District Court in cause number 2019-CI-07013 in the 285th District Court. Ex. A Temporary Orders in Suit Affecting the Parent-Child Relationship.

15. ANDRE MCDONALD informed the Western-Southern Life Assurance Company from the very beginning that it was his desire to waive any interest in the policy and that any proceeds should be awarded to beneficiary A.M. with an independent Trust. The proceeds from the Western-Southern Policy should be awarded or directed to a trust for the benefit and care of A.M. with a reoccurring accounting of the distribution of the funds.

PRAYER FOR RELIEF

WHEREFORE, ANDRE MCDONALD prays:

- (a) That the Court grant ANDRE MCDONALDS's request that the funds be awarded or directed to a Trust for the benefit of A.M. with an independent Trust with a requirement for regular accounting and of expenditures.
- (b) That the Court take such other steps a necessary to facilitate justice and grant such additional relief as may be right and proper.

Respectfully Submitted,

/s/John A. Convery
John A. Convery
SBN: 04715100

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CERTIFICATE OF SERVICE

I hereby certify that on date I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all parties:

/s/ John A. Convery
John A. Convery